No. 12347

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Appellant,

vs.

ALL AMERICAN AIRWAYS, INC.,

Appellee.

Appeal From the United States District Court for the Southern District of California Central Division

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BRIEF OF APPELLEE, ALL AMERICAN AIRWAYS, INC.

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I.
Statement of the Case.

Appellant's jurisdictional outline and statement of the case are adequate and will not be restated here.

II.
The Issue.

The sole issue of this appeal revolves around the proper construction of two sections of the United States Code. While there are other sections of ancillary interest, 26 U. S. C. 3672 and 49 U. S. C. 523 are the focal points of the dispute.

26 U. S. C. 3672 is a general statute providing that a federal tax lien "shall not be valid as against any mortgagee, pledgee, purchaser or judgment creditor until notice thereof has been filed by the Collector," in accordance with its provisions, which involves generally recordation at the county where the property may be situated.

49 U. S. C. 523 provides that no "bill of sale, contract of conditional sale, mortgage, assignment of mortgage, or

other instrument affecting title to, or interest in," aircraft shall be valid against innocent third parties unless recorded with the Administrator of Civil Aeronautics.

Appellee, relying upon the provisions of 49 U. S. C. 523 and finding no record of any tax lien or other claim in the office of the Administrator of Civil Aeronautics, purchased three Douglas DC-3 airplanes from Northern Airlines, Inc., the registered owner. Subsequent to the purchase appellee was advised by the Commissioner of Internal Revenue that prior to the purchase a notice of tax lien against Northern Airlines, Inc. totaling $30,547.80, including interest and penalties, had been filed under 26 U. S. C. 3672 in King County, Washington. Appellant admits that notice of the tax lien was not filed with the Administrator of Civil Aeronautics pursuant to 49 U. S. C. 523 and that appellee had no actual notice of the claimed tax lien at the time of the purchase.

The question is whether the District Court was correct in holding that 49 U. S. C. 523 establishes, for the protection of innocent third parties, a system for recording in a single agency all claims against aircraft, including federal tax liens, or whether recordation under 26 U. S. C. 3672 alone of a federal tax lien against aircraft takes priority over innocent third parties. In other words, in using the term "or other instruments affecting title to, or interest in" did the Congress mean what the words plainly mean or did the Congress mean "or other instruments, *except notices of federal tax liens.*"

Stated still another way, and perhaps more bluntly, the question is whether 49 U. S. C. 523 should be interpreted in a manner that will make it a sensible, useful and needed law or in a manner that will make it senseless and worse than useless.

III.

Summary of Argument.

The language of both 26 U. S. C. 3672 and 49 U. S. C. 523 supports the judgment below. 49 U. S. C. 523 is an all-inclusive statute embracing *all* instruments affecting title to one specific, special type of personal property—aircraft. To construe the statute in any other way would be to reduce it to a meaningless obstruction in the sale and financing of aircraft. 26 U. S. C. 3672, on the other hand, relates only to the validity of federal tax liens with respect to property in general—real and personal. The construction placed on 49 U. S. C. 523 by the District Court gives it life and purpose and does not destroy or impair 26 U. S. C. 3672. The construction urged by appellant would destroy 49 U. S. C. 523 without benefiting 26 U. S. C. 3672.

The history of the two statutes further establishes the validity of the ruling of the Lower Court. 26 U. S. C. 3672 is the outgrowth of the efforts of the Congress to provide broad and general protection to innocent parties against unknown federal tax liens. 49 U. S. C. 523 reflects a recognition by the Congress of the special and peculiar nature of aircraft which requires that innocent parties be given supplemental and special protection against tax liens as well as all other types of liens and claims. The two sections are not antagonistic or in any wise inconsistent.

Application of the fundamental rules of construction leaves no doubt as to the correctness of the District Court's decision.

Finally, an analysis of appellant's argument fails to disclose any valid reason for disturbing the judgment of the District Court.

IV.
ARGUMENT.

A. 49 U. S. C. 523 Is an All-Inclusive Statute Dealing With Recordation of All Claims to Any Interest in Aircraft, and the District Court in Refusing to Subvert the Purpose of Congress by so Holding Did Not Err.

A brief examination of the language of 49 U. S. C. 523 exposes its all-inclusive nature. At the outset it provides:

> "The Administrator shall establish and maintain a system for the recording of *each* and *all* of the following: (1) *Any* conveyance which affects the title to, or *any* interest in, *any* civil aircraft of the United States."[1]

The term "conveyance" is defined in 49 U. S. C. 401, Subsection 18:

> " 'Conveyance' means a bill of sale, contract of conditional sale, mortgage, assignment of mortgage, or *other instrument affecting title to,* or interest in, property."

These two sections when read together provide that "The Administrator shall establish and maintain a system for the recording of *each* and *all* of the following: (1) *Any*

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[1]Emphasis in quoted material added throughout unless otherwise noted.

The quotation is taken from 49 U. S. C. 523 as amended on June 19, 1948, which was subsequent to the last material date in this proceeding, as noted by appellant on page 10 of the appendix to its brief. However, the principal purpose of the amendment was to include aircraft parts. At the same time the language of the section was refined but without affecting the basic objectives of the original wording.

bill of sale, contract of conditional sale, mortgage, assignment of mortgage, *or other instrument affecting title to,* or interest in, *any* civil aircraft of the United States." The all-embracing and specific nature of this language is apparent. The repetition of such absolute words as "each," "all" and "any" is significant. Congress enumerated as many of those types of claims which affect title as it thought necessary and then included the term "other instrument" in order to insure against any omission. Exceptions hardly could be inferred from such language.

Baltimore National Bank v. State Tax Commission, 297 U. S. 209 (1936), 80 L. Ed. 586, involved the taxation by a state of stock of a national bank owned by Reconstruction Finance Corporation. A federal act (U. S. C., Title 12, Section 548), provided that *all* shares of a national banking association whose principal place of business was within the limits of a state were subject to taxation at the pleasure of the legislature of the state. The bank claimed immunity from the tax on its shares on the ground that all of the shares were owned by Reconstruction Finance Corporation. Justice Cardoza had this to say:

> "This court has held that Congress in saying 'all' meant exactly what it said, and that shares in a national bank belonging to another national bank were taxable to the same extent as if they belonged to anyone else. (p. 212.)
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> * * * * * * * *
>
> "True, as we have assumed, the Reconstruction Finance Corporation is a governmental agency, but

so also is a national bank. M'Culloch v. Maryland, 4 Wheat. 316, 4 L. ed. 579, *supra.* The question thus reduces itself to this, whether there is sufficient reason to believe that immunity from taxes of this kind has been given to the one agency, though by long accepted decisions it has been denied to the other.

"In such a situation the burden is heavily on the suitor who would subject the word 'all' with its uncompromising generality to an unexpressed exception. The petitioner reminds us that the ends to be served by the Reconstruction Finance Corporation are even more predominantly public than those of a national bank, since the bank, while promoting the fiscal needs of the government, is acting at the same time for the profit of its stockholders. The suggestion has its force, but force inadequate, we think, to carry to the goal. Its inadequacy is the more apparent when the capacity of the corporation to become a subscriber to the stock is followed to the sources. (pp. 212-3.)

* * * * * * * *

"All shares in national banks—no matter by whom owned—shall be subject to taxation. Rev. Stat. Sec. 5219, U. S. C. A. title 12, Sec. 548. Across the petitioner's path there still lies the stumbling block of the uncompromising 'all'." (p. 215.)

That the language of Section 523 was intended to be all-inclusive is further substantiated by placing Section 523 in its setting as a part of Subchapter V of Chapter 9 of Title 49 of the United States Code, which deals with "NATIONALITY AND OWNERSHIP OF AIRCRAFT." In Sec-

tion 521, which is also a part of that subchapter dealing with the recordation of nationality of aircraft, Congress, when desiring to exempt "aircraft of the national defense forces of the United States" felt compelled to do so *expressly*. With this evidence of Congress' concept of the all-inclusive nature of the provisions, there can be no doubt that had an exception in the case of federal tax liens been intended it would have been expressed.

26 U. S. C. 3672, in contrast, is a general recording statute. It is not an exclusive statute nor does it purport to lend validity to a federal tax lien, but rather provides that "such lien shall not be valid as against any mortgagee, pledgee, purchaser or judgment creditor" unless its provisions are complied with. That 26 U. S. C. 3672 is not the exclusive provision limiting the effectiveness of federal tax liens is manifest from a brief review of the cases. Federal estate tax liens have been excluded from the provisions of 26 U. S. C. 3672 and the provisions of 26 U. S. C. 827 held controlling. (*Detroit Bank v. the United States,* 317 U. S. 329, 63 Sup. Ct. 297, 87 L. Ed. 304 (1943).) By the terms of that section any "property sold . . . to a bona fide purchaser for an adequate and full consideration in money or money's worth shall be divested of the lien." In *The River Queen, The Dispatch II, The Eva Leigh,* 8 F. 2d 426 (1925), a federal tax lien, properly recorded under 26 U. S. C. 3672 and otherwise valid, was held ineffective against a maritime lien which was held to be superior in right. In *In re Holmes Mfg. Co.,* 19 F. 2d 239 (1927), a properly re-

corded income tax lien was held secondary to the obligations incurred by a receiver under a court order, the court saying:

> "It does not seem to me that it was the intention of Congress in enacting Section 3186 [now 26 U. S. C. 3670 and 3672] to secure a lien to the government of property in the hands of the receiver which is insufficient in amount to pay the expenses of the receiver incurred under the order of the court upon the filing of the claim for taxes."[2]

An examination of 26 U. S. C. 3672 makes obvious the conclusion that its entire purpose is to establish a means of helping to protect innocent purchasers from the dangers of secret tax liens upon property in general. Consequently, any statute furthering or bolstering this purpose, such as 49 U. S. C. 523, could not be out of harmony with or contrary to the provisions of 26 U. S. C. 3672. It should be remembered that the reason for recording laws is to make it possible for persons interested to discover with reasonable ease the existence of liens. (*Alcus v. City of New Orleans, La.,* 187 So. 557.)

On the basis of the language of the statutes alone, this appeal should be resolved in appellee's favor.

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[2]See also *Schmitz v. Stockton,* 151 Kan. 891; 101 P. 2d 962; *Regan v. Metropolitan Haulage Company,* 127 N. J. Equity 487, 14 Atl. 2d 257.

B. The History of 26 U. S. C. 3672 and 49 U. S. C. 523 Supports the Decision of the Lower Court.

The provisions of the Internal Revenue Code upon which appellant relies are the result of a gradual evolution in tax legislation. Before the amendment of March 4, 1913, which became 26 U. S. C. 3672, a federal tax lien was valid as against subsequent purchasers and encumbrancers without notice and there was no provision for the filing or recording of a notice of lien. It was in reply to justified and vigorous criticism that Congress amended the law to provide for protection of bona fide mortgagees or purchasers against a federal tax lien which was not filed at the time of the mortgage or purchase.[3]

While these amendments in the Revenue Statutes were being enacted, more effective and entirely new statutory provisions were being made necessary by developments in the field of aviation. Despite the attempt at federal regulation through the Air Commerce Act of 1926, Congress was faced in 1938 with a scene of confusion resulting from the complete lack of organization in the handling of aircraft problems.

> "At that time three departments of our government were each striving to do their part in promoting aviation. These departments, each doing its best in its own way, were not co-operating, not co-ordinated in their activity. The result was, as might be expected, confusion and lack of initial responsibility. The industry was impaired, investment discouraged and confusion and lack of co-operation was present as re-

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[3]Federal Tax Liens, 105 A. L. R. 1244 at 1250; Federal Taxes and Preferred Ship Mortgages, 38 Harvard Law Review 1060; Merton's Law of Federal Income Taxation, Vol. 9, §54.42 at 608.

gards that which in all human activity should exist—synchronized co-operation between employer and employee."[4]

To consider the solution to this problem the President of the United States, under the Air Mail Act of 1934 (39 U. S. C. 461-465), provided for the creation of a presidential commission known as the Federal Aviation Commission. This Commission reported to Congress on January 26, 1935, its "Study and survey, and . . . its recommendations of a broad policy covering all phases of aviation and the relation of the United States thereto." One hundred and two separate recommendations were made by the Commission. Recommendation 101, together with the accompanying discussion, reveals that the Commission considered the problem of proper recordation of matters affecting title to aircraft as involved in the over-all confusion to be resolved. Recommendation 101 reads:

"The application of general legal principles to matters specifically aeronautical should be modified as experience has shown to be wise, *and in particular there should be provisions for federal recording of title to aircraft and of mortgages and* OTHER LIENS.

"It has been inevitable that the rapid changes in aeronautics, together with the administrative experience gained in the control of a new and growing industry, would require changes from time to time in the organic legislation pertaining to the subject. The Air Commerce Act of 1926 has already manifested the wisdom of its sponsors and their foresight

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[4]Senator Pat McCarran, co-author of the Civil Aeronautics Act of 1938, in the foreword to the Civil Aeronautics Act Annotated, by Charles S. Rhyne (1939).

through its ability to meet the needs of aviation development over a period of eight years. Re-examining the subject after that length of time, however, it now appears to us and to legal authorities whom we have consulted that certain changes would be desirable. Largely upon the suggestions of representatives of the Bureau of Air Commerce, whose daily experience with the provisions of the Act warrant careful consideration of their proposals, it is recommended that the Act be so amended as (1) to restate the provision for the registration of aircraft for purposes of nationality; (2) to provide where possible for the recording of title to aircraft; (3) to provide where possible for the recording of *mortgages and/or other liens* upon aircraft; (4) to authorize further safety and public-health regulations; (5) to restate the licensing procedure and to provide additional authorization therefor; (6) to authorize the classification and rating of all air navigation facilities; and (7) to clarify the definitions of terms used in the Act. *The second and third of these seven proposals seem to us particularly important, as designed to give aircraft a legal stability as property that they have never heretofore possessed."*

As a result of these recommendations numerous bills were entered in Congress. The present Civil Aeronautics Act was the culmination of the work of Mr. Lea in the House of Representatives and Mr. McCarran in the Senate and was drafted substantially in its present form by an inter-departmental committee appointed by the President in the late summer of 1937, comprised of representatives of the departments of State, Commerce, Post Office, *Treasury,* War and Navy. Particular note should be made of the fact that the Treasury Department, of which, of course,

the Bureau of Internal Revenue is an integral part, actively participated and was present at the inception of the legislation which became the Civil Aeronautics Act. Mr. Clinton M. Hester represented the inter-departmental committee at the hearing before both the Committee on Interstate and Foreign Commerce of the House of Representatives and the Commerce Committee of the Senate. In this connection the following excerpts from the hearing before the Committee on Interstate and Foreign Commerce of the House of Representatives, 75th Congress, 3rd Session, on H. R. 9738, taken from the Committee Proceedings on Friday, April 1, 1938, at page 405 of the report of those hearings, are pertinent:

> "Chairman: Mr. Hester, on page 59 there is a provision for recording of transfer of aircraft owner's records. I wish you would comment briefly on that.
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> 'The authority shall establish and maintain a system of recording all conveyances affecting the title to and interest in any civil aircraft of the United States.'
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> Mr. Hester: If I may, I will ask Mr. Fagg to comment on that.
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> Mr. Fagg: . . . At the present time and for the past ten years there has been an attempt to record the title for owners of aircraft in the United States that are owned by citizens of the United States; but such recording has been wholly for purposes of determining the nationality of the aircraft. In other words, that has been a step which was provided in the law for the licensee of the aircraft under the provision of the 1926 law.
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> That has long been felt to be unsatisfactory and particularly when the Reconstruction Finance Corpo-

ration began to make loans, they felt that there should be some protection and many private owners have long felt that *there should be some agency of the Government wherein any interest in aircraft could be recorded for their own protection, because the buyer of a private airplant is up against a problem far worse than that of a purchaser, let us say, of an automobile. Because aircraft can be moved so rapidly from State to State, State recording laws in their individual differences have worked a hardship on the buyer rather than really aided him.* One step in that direction would be, of course, to have a uniform State law; but the possibilities of getting that at an early date seemed to be somewhat remote, and with that thought in mind, *it has been suggested that the Federal Government serve that want by setting up a title recording agency within this civil aeronautic authority.*

Mr. Boran: Will you permit a question there, Mr. Fagg?

Mr. Fagg: Yes.

Mr. Boran: Have there been, to your knowledge, numerous instances of faulty title to aircraft because of this condition?

Mr. Fagg: Yes sir; there have been many complications, Mr. Boran, that have arisen as to whether or not we should license aircraft, because we firmly believe we do not possess all of the facts. There have been many cases that have been embarrassing to us in the mere recordation of titles for the purpose of nationality."

It was under the glare of this illuminating background that Congress included the central recording provision in the Civil Aeronautics Act of 1938, which Act had as its

purpose "to co-ordinate in a single independent agency all of the existing functions of the federal government with respect to civil aircraft, and in addition, to authorize the agency to perform certain new and regulatory functions which are designed to stabilize the air transportation industry in the United States."[5]

The reasons for the creation of a single agency to handle all phases of the aircraft problem were well explained in the report from the Committee on Interstate and Foreign Commerce of the House of Representatives:

> "Careful consideration was given by your committee to the question as to the desirability of creating an independent agency to regulate civil aeronautics. Due to the unique character of the regulatory problem presented by civil aeronautics, it was concluded by your committee that for the present the most efficient and advantageous regulation, both from the standpoint of the public interest and from that of the industry to be regulated, could be secured by the co-ordination of *all governmental functions relating to civil aeronautics in a newly created independent agency.*"[6]

The purpose of including 49 U. S. C. 523 in the general plan of unification was clarified by the Honorable Fred Fagg, presently the President of the University of Southern California, in his testimony before the Committee on Interstate and Foreign Commerce of the House of Representatives as "primarily aimed to make a *central*

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[5]Report from the Committee on Interstate and Foreign Commerce, No. 2254, Series 10234, to accompany H. R. 9738.

[6]Report from the Committee on Interstate and Foreign Commerce, No. 2254, Series 10234, to accompany H. R. 9738, at page 4.

clearinghouse for recordation of titles so that a person, wherever he may be, will know where he can find ready access to the *claims* against *or liens* or *other legal interests* in an aircraft." In Civil Aeronautics Act Annotated, by Charles S. Rhyne, when referring to the statement made by Mr. Fagg before the Committee of the House of Representatives, the author noted:

> "This statement directly relating to recordation states the exact problem that Congress intended to solve by requiring recordation. Some other past experiences of private persons demonstrate the need for centralized and adequate recording records, which all purchasers can check before purchasing an airplane" (p. 151).

This brief historical sketch of the Civil Aeronautics Act of 1938 exposes the intent of Congress in enacting it. The Act was designed to lend order where there had been confusion, not the least of which was in the field of recordation of titles and claims to aircraft. It was designed to concentrate in a single agency all matters affecting aircraft. At the time of its passage Howard S. Leroy, writing in 19 Air Law Review 315, observed:

> "The administrative regime is comprehensive, fully integrated and calculated to govern the art for the forseeable future."

Included in this comprehensive and integrated regime was the provision for the centralized recordation of titles and claims to aircraft.

In response to this purpose and intent the Court in *In the Matter of Veterans' Air Express, Inc.,* 76 Fed. Supp. 684 (D. C. N. J., 1948), made this observation concerning 49 U. S. C. 523:

> "It is clear that the Congress has prescribed the *only way* in which aircraft may be transferred and in which *liens* upon aircraft may be duly recorded. In this manner all persons dealing with aircraft are upon full legal notice concerning possible liens and are charged with the duty of inquiry at the Central Recording Office of the Civil Aeronautics Administration with respect to any aircraft in which they might be concerned" (p. 688).

Likewise in *United States v. United Aircraft Corp.,* 80 Fed. Supp. 52 (D. C. Conn., 1948), the court said:

> "The Congress has pre-empted the field of conveyancing of interests in aircraft and portions thereof to facilitate the control and promotion of air commerce. The power to do so may not be denied . . . *The recording system for aircraft covers the entire United States*"[7] (p. 54).

That these opinions were shared by Congress and acted upon in 1948 is evidenced by the language employed in the report of the House Committee on Interstate and Foreign

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[7]In *Wilson v. Barnes, et al.,* 221 S. W. 2d 731 (June 13, 1949), the Supreme Court of Missouri relied upon *United States v. United Aircraft Corporation,* and *In re Veterans Air Express Co., Inc.,* in sustaining a writ of attachment levied on ten airplanes against a third party claim which was not recorded in accordance with 49 U. S. C. 523. The Supreme Court of Georgia in *Blalock v. Brown,* 78 Ga. A. 540, 51 S. E. 2d 610 (February 3, 1949), also cited with approval *United States v. United Aircraft Corporation* and *In re Veterans Air Express Co., Inc.,* and held the defendant's title in an airplane recorded at the office of the Administrator of Civil Aeronautics under 49 U. S. C. 523 superior to plaintiff's claim under a prior unrecorded conveyance.

Commerce on the amendments then enacted to 49 U. S. C. 523 concerning spare parts:

> "The Committee on Interstate and Foreign Commerce, to whom was referred the bill (S. 2454), to amend the Civil Aeronautics Act of 1938, as amended, to make further provision for the recording of title to, *interests in,* and *encumbrances upon* certain aircraft, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass."
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> * * * * * * * *
>
> "This bill would provide a system for the recordation of *liens* on large aircraft engines and on spare parts used by air carriers. *The Civil Aeronautics Act now provides that the Administrator maintain a system for the recordation of all conveyances affecting title to, or interest in, aircraft of the United States.* That system has been in operation successfully for 10 years, but does not permit the recordation of liens on aircraft engines or spare parts maintained for installation in aircraft. This bill would broaden the present provisions to permit that type of recordation."[8]

The amendment of 1948 was intended to implement an already existing system for recordation of liens on aircraft by the addition of liens upon parts of the airplanes. The whole purpose of this amendment, as well as the basic provision of the statute, would be defeated if any omission or exception in the record of title in the office of the Civil Aeronautics Board were permitted by judicial interpretation.

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[8]United States Code Congressional Service (1948), Vol. 2, page 1896.

Unless the very purpose of the centralized recording system for aircraft, as set up by 49 U. S. C. 523, is to be completely stultified, the United States Government must record its claim of tax lien on an aircraft in compliance with that centralized procedure to the same extent as is required of the most humble citizen if he wishes to protect his interest in an aircraft against the claims of an innocent third party. If a purchaser of aircraft could rely on the central recording agency only for all adverse claims, interests or liens, except a claim of the United States Government for a tax lien, the benefits of the central recording system would be little more than zero. To be certain of the validity of his title to the aircraft being purchased he would still have to search the records of every county of every state of the United States to be sure that the government had no claim of a tax lien. If required to make this collateral search for a government tax lien he might just as well be searching at the same time for all other liens and claims. Thus, if a single exception be admitted to the Act through judicial construction, the entire Act should be repudiated, as the state of confusion stemming from a single exception would be quite as complete as it was before the Act was placed in the books.

It is not sensible to conclude that Congress could have intended to set up a centralized procedure for recordation and at the same time defeat its purpose of providing certainty in transactions dealing with aircraft by eliminating tax liens from the requirements of central recordation. Such a conclusion becomes impossible when it is realized that the impression given Congress throughout the testimony of Mr. Fagg was that the Act provided "a central clearing-house . . . where" a purchaser could find "ready access to the claims against, or *liens,* or other legal interests in aircraft" and that this testimony of Mr.

Fagg was given at the request of the representative of the Treasury Department, Mr. Clinton M. Hester. Mr. Hester by his own testimony[9] was the chairman of the subcommittee of three which was in charge of the drafting of the bill. He was also chief counsel of the Treasury Department heading a staff which devoted itself largely to the drafting of legislation in which the Treasury Department was interested.

There is a certain aura of bad faith about the position of the representatives of the Treasury Department now eleven years later seeking to contradict the explicit impression given Congress.

> "Words generally have different shades of meaning, and are to be construed, if reasonably possible, to effectuate the intent of the lawmakers; and this meaning in particular instances is to be arrived at not only by a consideration of the words themselves, but by considering, as well, the context, the purposes of the law, and *the circumstances under which the words were employed.*"
>
> *People of Puerto Rico v. Shell Oil Co.,* 302 U. S. 253, 58 Sup. Ct. 167, 82 L. Ed. 235.

The words of the statute itself, its context, its purposes and the circumstances under which it was enacted all conclusively establish the intention of Congress to provide a means for the recordation of *all* claims against aircraft with one agency where prospective purchasers, such as appellee, might satisfy themselves of the safety of their contemplated investment or purchase.

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[9]Report of the hearings before the Committee on Interstate and Foreign Commerce of the House of Representatives, at page 48 of the report of the hearings.

C. **Application of Fundamental Rules of Construction Leaves No Doubt as to the Correctness of the Decision of the Lower Court.**

> "There can be no question that the court must be guided by the elementary rule of construction, that, wherever possible, the language will be interpreted so as to give effect to the object sought to be accomplished."
>
> *Madison Park Corp. v. Bowles,* 140 F. 2d Em. App. 360.

The object sought to be accomplished by Congress in the enactment of 49 U. S. C. 523 cannot be denied. As has been demonstrated, Congress intended to establish "centralized and adequate recording records which all purchasers can check before purchasing an airplane."[10] Applying the elementary rule of construction of effectuating this intent, the District Court was correct in construing 49 U. S. C. 523 to apply to *all* claims of interest in aircraft, including tax liens.

This first rule of construction is followed closely, if not accompanied, by the rule cited in *Bird v. The United States,* 187 U. S. 118, at 124, 23 Sup. Ct. 42, 47 L. Ed. 1245:

> "There is a presumption against a construction which would render a statute ineffective or insufficient, or which would cause grave public injury or even inconvenience."

The case here at issue offers an excellent example of the injuries that would accrue if the construction now

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[10]Charles S. Rhyne in Civil Aeronautics Act Annotated (1939) at page 151.

urged by appellant were adopted. Appellee, All-American Airways, Inc., with its offices and operations in the east, is a commercial airline holding a certificate of public convenience and necessity issued by the Civil Aeronautics Board under the Act of which the statute with which this appeal is concerned forms a part. It is perfectly reasonable to assume that appellee has an attorney familiar with aviation law in general, and the Civil Aeronautics Act in particular, including 49 U. S. C. 523, and that appellee was advised by its counsel that a search of the instruments on record at the centralized agency pursuant to 49 U. S. C. 523 would be sufficient to assure clear title to the three airplanes involved in this appeal. Thus a federally certificated airline operating under the Civil Aeronautics Act for more than ten years and guided by experienced counsel, construed 49 U. S. C. 523 as the Lower Court construed it and relied on that construction. The $30,000.00 which appellee would lose by an erroneous decision in this proceeding is grave enough. But the damage to the entire commercial airline industry, as well as the public at large, transcends the injury which appellant would sustain, grave as that might be.

Again in *Haggar Co. v. Helvering,* 308 U. S. 389, at 394, 84 L. Ed. 340, at 344, Justice Stone stated the rule:

> "All statutes must be construed in the light of their purpose. A literal reading of them which would lead to absurd results is to be avoided when they can be given a reasonable application consistent with their words and with the legislative purpose."

Finally, the rule has been restated recently in *Vermilya-Brown Co. v. Connell,* 93 L. Ed. 99, at 105, Adv. Opin. (December 6, 1948), where the Supreme Court was considering the meaning of the word "possession" in the Fair Labor Standards Act as extending that Act to the lend-lease base at Bermuda:

> "What was said of 'territories' in the Shell Co. Case, 302 U. S. 253, at 258, 82 L. ed. 235, 240, 58 S. Ct. 167, is applicable:
>
> 'Words generally have different shades of meaning, and are to be construed if reasonably possible to effectuate the intent of the lawmakers; and this meaning in particular instances is to be arrived at not only by a consideration of the words themselves, but by considering, as well, the context, *the purposes of the law,* and the circumstances under which the words were employed.'
>
> The word 'possessions' has been employed in a number of statutes both before and since the Fair Labor Standards Act to describe the areas to which various congressional statutes apply. We do not find that these examples sufficiently outline the meaning of the word to furnish a definition that would include or exclude this base. While the general purpose of the Congress in the enactment of the Fair Labor Standards Act is clear, no such definite indication of the purpose to include or exclude leased areas, such as the Bermuda base, in the word 'possession' appears. We cannot even say, 'We see what you are driving at, but you have not said it, and therefore we shall go on as before.' *Under such circumstances, our duty as a court is to construe the word 'possession' as our judgment instructs us the lawmakers, within constitutional limits, would have done had they acted at the time of the legislation with the present situation in mind."*

From these pronouncements of the Supreme Court, it is clear that even if the language of 49 U. S. C. 523 were ambiguous in its application to *all* claims against aircraft, which is not the case, neither this court nor the District Court would be bound by any literal interpretation in effectuating the manifest purpose of Congress. This court is free to examine the Congressional mind for the purpose of determining the applicability of 49 U. S. C. 523 to specific types of claims such as federal tax liens.

Since 26 U. S. C. 3672 is argued by appellant to be in conflict with 49 U. S. C. 523, it is appropriate to mention another rule of construction which may be applied to it:

> "It is to be remembered that we are dealing with a tax measure, and whatever doubts exist must be resolved against it."
>
> *Schwab v. Doyle,* 258 U. S. 529, 42 Sup. Ct. 391, 66 L. Ed. 747.

This rule was restated in *White v. Aronson,* 302 U. S. 16, at 20, 82 L. Ed. 20, at 23: "Where there is a reasonable doubt as to the meaning of a taxing act, it should be construed most favorably to the taxpayer." And again in *Hassett v. Welch,* 303 U. S. 303, 82 L. Ed. 858, in which the court found against the government:

> "In view of other settled rules of statutory construction, which teach * * * that, if doubt exists as to the construction of a taxing statute, the doubt should be resolved in favor of the taxpayer."

It follows that in carrying out the purpose of 49 U. S. C. 523 the court is also aided by an application of

strict rules of construing tax statutes as a repellent to the claimed conflict of 26 U. S. C. 3672.

The statutes here involved also call for application of the general principle that when one statute deals with a subject in general terms, and another deals with a part of the same subject more definitely, and the two are not necessarily repugnant, the special statute will prevail over the general. This is particularly true when the special statute is later in point of time. Where the general statute, if standing alone, includes the same matter as the special statute and thus to that extent conflicts with it, the special act usually will be considered an exception to the general enactment, even though passed before the general enactment. Where the special statute is later it will *always* be regarded as an exception to or qualification of the prior general act.[11]

Here the general statute is 26 U. S. C. 3672 which deals with all types of property, real and personal. The special statute is 49 U. S. C. 523 which deals only with aircraft and aircraft parts—a specific type of personal property.

The special statute pertaining to airplanes was enacted after the general statute and thus it would be proper (if ambiguity or conflict existed) to apply the rule that the special statute, 49 U. S. C. 523, is an exception to, or a qualification of, the general statute, 26 U. S. C. 3672.

In *MacEvoy v. United States,* 64 Sup. Ct. 890, 322 U. S. 102, 88 L. Ed. 1163 (1944), it is said at page 1167 (L. Ed.):

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[11]59 C. J. 1056, 1058.

> "However inclusive may be the general language of a statute it will not be held to apply to a matter specifically dealt with in another part of the same enactment. Specific terms prevail over the general in the same or *another statute* which otherwise might be controlling."

In *United States v. Windle,* 158 F. 2d 196 (8th Cir. Ct., 1946), which dealt with the Internal Revenue Code, it is said at page 199:

> "We recognize the rule that generally special terms of a statute prevail over general terms in the same or another statute which otherwise might control * * * The purpose of this rule is to give effect to presumed intention of the lawmaking body."

In *Detroit Bank v. United States,* 317 U. S. 329 (1914), 87 L. Ed. 304, the court held that 26 U. S. C. 3670 and 3672 did not establish the exclusive means by which federal tax liens may be made effective and that estate tax liens become effective pursuant to the provisions of Section 315(a), Revenue Act of 1926. The court noted that the two statutes were intended to operate independently of the other, and that an estate tax lien created by Section 315(a) was not subject to the recordation requirement of Section 3672. In the case at issue, because of the legislative intent in setting up the centralized recording system affecting civil aircraft, the special statute must prevail.

Application of fundamental rules of construction leaves no doubt as to the correctness of the judgment of the District Court applying 49 U. S. C. 523 in a manner which effectuates the Congressional intent.

D. Appellant's Argument Analyzed.

Appellant's argument appears to consist of four propositions. Simply stated they are:

1. The facts in this case and a reading of 26 U. S. C. 3672 establish the validity of the government's lien.

2. Failure expressly to include federal tax liens within the provisions of 49 U. S. C. 523 excludes them from its provisions.

3. A notice of a federal tax lien is not an instrument affecting title to, or interest in, aircraft, within the meaning of 49 U. S. C. 523.

4. The courts should not be influenced by the incongruous and injurious effects of the interpretation urged by appellant.

(1) The Facts in This Case and a Reading of 26 U. S. C. 3672 Establish the Wisdom of the Decision of the District Court.

Appellant's first proposition is that the "facts establish * * * the tax lien of the United States * * * was valid" and "Section 3672 of the Code [Title 26] makes that lien valid."[12] The argument simply begs the question on this appeal. The facts establish only that the United States recorded a tax lien against Northern Airlines, Inc. with the auditor of King County, Washington, and that appellee purchased three DC-3s belonging to Northwest Airlines, Inc. in good faith, relying on the absence of any recorded claim against the title of

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[12]Appellant's Brief, pages 10-12.

Northwest Airlines, Inc. in the office of the Civil Aeronautics Administrator. As has been shown in this brief (pp. 7 and 8), 26 U. S. C. 3672 does not establish the validity of a tax lien but is simply a non-exclusive *limitation* on the validity or effectiveness of the lien. Appellant's contention is like arguing that an unrecorded mortgage is a valid lien between the mortgagor and mortgagee. There is no question about this, but until the mortgagee causes the mortgage to be recorded in accordance with the applicable law he is not protected as against innocent third persons who deal with the property without actual notice of the unrecorded mortgage. It is in this situation that appellant finds itself because it did not see fit to comply with the recording Act that pertains to civil aircraft. Appellee, an innocent purchaser, relied on that omission and should not be penalized because of appellant's default.

(2) Specific Language Is Not Necessary to Include Federal Tax Liens Within the Provisions of 49 U. S. C. 523.

Appellant next urges that "a statute which in general terms divests pre-existing rights or privileges will not be applied against the sovereign without express words to that effect"[13] and reasserts its position on page 17 that "The important factor in this case is that the recordation provisions of the Civil Aeronautics Act does not expressly include tax liens created under the Internal Revenue Code."

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[13]Appellant's Brief, pages 12-13.

In support of this claimed rule appellant relies upon *United States v. United Mine Workers of America,* 330 U. S. 258, 67 Sup. Ct. 677, 91 L. Ed. 884. In that case the court at pages 273-4 said:

> "There is an old and well-known rule that statutes which in general terms *divest pre-existing* rights or privileges will not be applied to the sovereign without express words to that effect. It has been stated, in cases in which there were *extraneous and affirmative reasons for believing that the sovereign should also be deemed subject to a restrictive statute,* that this rule was a rule of construction only."

In *Nardone v. the United States,* 302 U. S. 379, 58 Sup. Ct. 275, 82 L. Ed. 314, it was recognized that the rule was subject to limitations and "the cases in which it has been applied fall into two classes. The first is where an act, if not so limited, would deprive the sovereign of a recognized or established prerogative, title or interest."

There are, therefore, at least two exceptions to the application of this rule of construction, (1) when the government is *not* divested of a pre-existing right or privilege by the statute, and (2) when extraneous and affirmative reasons exist for applying the statute to the government. The statute here involved falls within *both* of the exceptions and, in addition, contains express words bringing the government within its purview.

The government is not divested of any pre-existing right or privilege by 49 U. S. C. 523. This statute merely simplifies the procedure for implementing a pre-existing right. Had 49 U. S. C. 523—to resort to a rather grotesque example—proclaimed that no person could obtain any kind of a lien against any civil aircraft, by mortgage or otherwise, appellant might well have had an argument.

But that is not the situation. Under the statute the government can establish its lien by the very simple procedure of recording it with one centralized recording agency. This is an added advantage—not a divestment of a right or privilege.

Extraneous and affirmative reasons exist for applying 49 U. S. C. 523 to the government. The purpose of the statute is obvious. An airplane is not like a drill press or house and lot, or even an automobile, all of which have a permanent "residence" and lend themselves to application of local recording rules. This is not true of the airplane, the transitory nature of which places it in a class by itself. To prevent wrongs and to eliminate confusion, the Congress wisely provided for a centralized recording agency with respect to civil aircraft. By searching the records of that single agency, any interested party, including the government and any of its agencies, can check the title to any particular aircraft. If the government were not required to record its lien under 49 U. S. C. 523 the value of a centralized recording agency would be destroyed completely. A single exception to the application of the statute would necessitate a nationwide search, in addition to searching the records of the Civil Aeronautics Board, in order to be certain of the title to any aircraft. These are extraneous and affirmative reasons for believing that the Congress intended that the government also should be held subject to the statute.

The Civil Aeronautics Act expressly applies to the government. Even though neither of the two exceptions to the rule of construction urged by appellant were held to apply, the Civil Aeronautics Act very clearly comes within the purview of the rule itself. No case cited by the government, and none that appellee can find, declares that a

statute divesting a pre-existing right or privilege must *name* the government as such.

The Act itself by express words makes it manifest that the sovereign is included. Section 1 of the Act (49 U. S. C. 401) reads in part:

> "Section 1. As used in this Act, unless the context otherwise requires—
>
> (27) *'Person'* means any individual, firm, copartnership, corporation, company, association, joint-stock association, or *body politic;* and includes any trustee, receiver, assignee, or other similar representative thereof."

Section 501 of the Act (49 U. S. C. 521) reads in part:

> "Registration Required
>
> (a) It shall be unlawful for any *person* to operate or navigate any aircraft eligible for registration if such aircraft is not registered by its *owner* as provided in this section, or (except as provided in section 6 of the Air Commerce Act of 1926, as amended) to operate or navigate within the United States any aircraft not eligible for registration: *Provided, That aircraft of the national defense forces of the United States may be operated and navigated without being so registered if such aircraft are identified, by the agency having jurisdiction over them, in a manner satisfactory to the Administrator of Civil Aeronautics.* The Administrator of Civil Aeronautics may, by regulation, permit the operation and navigation of aircraft without registration by the owner for such reasonable periods after transfer of ownership thereof as the Administrator of Civil Aeronautics may prescribe.

"Eligibility for Registration

(b) An aircraft shall be eligible for registration if, but only if—

(1) It is owned by a citizen of the United States and is not registered under the laws of any foreign country; or

(2) It is an aircraft of the *Federal Government,* or of a State, Territory, or possession of the United States, or the District of Columbia, or of a political subdivision thereof."

If it were not intended that the Act apply to the government, it would not have been necessary to make an exception with respect to aircraft of the national defense forces of the United States. Moreover, under subdivision (a) of 49 U. S. C. 521 it is unlawful for any *person* to operate or navigate any aircraft *eligible for registration* if it is not registered by its *owner*. Subdivision (b) designates the aircraft that are eligible for registration and includes aircraft of the federal government. Thus the words "person" and "owner" as used in subdivision (a) necessarily must include the federal government. This construction ties with subdivision (27) of Section 1 (49 U. S. C. 401) defining "persons" as including a *body politic.*

The language of the statute here at issue, read with the language quoted in Section 501 (49 U. S. C. 521) and the definition of "person" quoted in Section 1 (49 U. S. C. 401), excludes all validity to any argument that the Civil Aeronautics Act lacks express words to the effect that the United States Government was intended to be subject to its provisions.

At this point a query is pertinent. If the government be not required to record its tax liens against aircraft

under 49 U. S. C. 523, would a chattel mortgage between individuals, recorded under the statute, be valid against the government if the government purchased the aircraft from the mortgagor? The statute states that no conveyance (which includes a chattel mortgage as well as a tax lien) shall be valid against any *person* until the conveyance is recorded in the office of the Secretary of the Board. If the word "person" does not include the government, an individual mortgagee would not be safe in recording under the Act. A construction that the government is not required to record its liens under 49 U. S. C. 523 would be bad enough. A construction that, in addition, a chattel mortgage recorded under the statute would not be valid against the government as a purchaser would lead to vicious consequences. Either construction, necessarily, would carry with it the other if consistency were preserved.

In the same vein it might be asked whether a chattel mortgage on civil aircraft in favor of Reconstruction Finance Corporation and recorded under 49 U. S. C. 523 would be valid against the Treasury Department or any other agency of the government.[14] Other examples could be given of the grotesque consequences which would flow from an acceptance of the crude construction of the statute proclaimed by appellant.

It must be remembered that the rule cited by appellant is "a rule of construction only" (*United States v. United Mine Workers of America,* 330 U. S. 258, 67 Sup. Ct.

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[14]There can be no doubt of the right of this court to take judicial notice of the fact that Reconstruction Finance Corporation holds chattel mortgages on civil aircraft recorded under the statute which involve many millions of dollars loaned to commercial airlines.

677, 91 L. Ed. 884). As such the rule was clarified in *United States v. California,* 297 U. S. 173, 186, 80 L. Ed. 567, 574, by the statement that:

> "The presumption is an aid to consistent construction of the statutes of the enacting sovereign when their purpose is in doubt, but it does not require that the aim of a statute, fairly to be inferred, be disregarded because not explicitly stated."

The principle is further elaborated in *Baltimore National Bank v. State Tax Commissioner,* 297 U. S. 209, 80 L. Ed. 586, "that the sovereign *is* embraced by general words of a statute intended to prevent injury and wrong."

Agreement is found in the language of the Supreme Court in *United States v. Rice,* 327 U. S. 742, 90 L. Ed. 982, in holding that Section 2 of the Judiciary Act of March 3, 1887, 28 U. S. C. 71 and 80 applies to deny to the government the right to an appeal or writ of error from the decision of any federal court remanding a case to a state court, although the government is in no way mentioned in the Act. The court stated at pages 752-753:

> "Statutory language and objective, thus appearing with reasonable clarity, are not to be overcome by resorting to a mechanical rule of construction whose function is not to create doubts but to resolve them when the real issue or statutory purpose is otherwise obscure."

In face of the clarity of the law and the background of its enactment appellant's statement on page 17 of its brief that "if it [Congress] had intended that the recordation provisions of the Act apply to liens with respect to civil aircraft, it would have said so specifically" has a hollow ring. When called upon to explain 49 U. S. C. 523,

Mr. Clinton Hester, legislative counsel of the Treasury Department representing the inter-departmental commmittee which proposed the Civil Aeronautics Act of 1938, introduced Mr. Fred Fagg who asserted that the Act was intended to cover *all* claims. If the Treasury Department wished to controvert that interpretation of the provision the time to have done so was then through its representative, Mr. Hester, instead of eleven years later in this litigation, to the detriment of appellee which innocently relied upon the Treasury Department's own interpretation.

(3) A Notice of a Federal Tax Lien Is an Instrument Affecting Title to, or Interest in, Aircraft Within the Meaning of 49 U. S. C. 523.

Appellant's third contention is that "tax liens . . . cannot . . . be regarded as being included in the general phrase 'or other instrument affecting title to, or interest in property' (49 U. S. C. 523)" and seeks to apply the rule of *ejusdem generis* to limit the application of the statute to instruments "used to effect a transfer by an owner of property . . . by affirmative act."[15]

Appellant cites no case limiting the word "instrument" in a recording statute to such a forced definition. To the contrary, in *State v. Phillips,* 157 Ind. 481, 62 N. E. 12, the court considered a statute fixing a fee for the recording of "deeds and mortgages" and providing "for entering on entry book, indexing and recording *all other instru-*

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[15]Appellant's Brief, pages 13-14.

ments." Plaintiff sought a writ of mandamus to compel the county recorder to enter a notice of a mechanic's lien. The court granted the writ, saying:

> "The word 'instrument' in a legal sense is defined to be 'a writing as the means of giving formal expression to some act; a writing expressive of some act, contract, process, or proceeding, as a deed, contract, writ and so forth.' Webs. Int. Dic." (p. 14.)

and:

> "The word 'instrument' is frequently employed in our registry laws and usually refers to some written document that is entitled to be recorded in a public record." (p. 14.)

In *Driefus v. Marks, et al.,* 40 Cal. App. 2d 461, 104 P. 2d 1080, the court considered the validity of the recordation of a notice of rescission under Civil Code, Section 1158, which provided in part:

> *"Any instrument . . . affecting the title* to or possession of real property may be recorded under this chapter."

The court held:

> "In the language of said code section, said notice of rescission did affect the title to real property. Its effect was to declare to the world that the author of the notice had by the delivery of a deed been defrauded by the party upon whom the notice had been served, or had failed to receive consideration for the deed, which fact was notice of the invalidity of such prior deed." (p. 466.)

Similarly in this case notice of a federal tax lien was an instrument which appellant might have recorded and

which Congress intended should be recorded at the office of the Administrator of Civil Aeronautics.

In its argument that, under the doctrine of *ejusdem generis,* instruments should be limited to those constituting affirmative acts of the owner of the property, appellant again fails to cite any authority. In *City of Los Angeles v. Superior Court of L. A. County,* 2 Cal. 2d 138, 39 P. 2d 401, the court was presented with a similar argument. Plaintiff, City of Los Angeles, had commenced condemnation proceedings. At the time of the action a street assessment had been filed against the land but was not yet due. The City sought to deduct the amount of the street assessment from the consideration paid to defendant under Code of Civil Procedure, Section 1248, subsection 8, which provided:

> " 'When the property sought to be taken is encumbered by a *mortgage or other lien,* and the indebtedness secured thereby is not due at the time of the entry of the judgment, the amount of such indebtedness may be, at the option of the plaintiff, deducted from the judgment, and the lien of the mortgage or other lien shall be continued until such indebtedness is paid.' "

Defendant there urged, as appellant does here, that in using the term "mortgage or other lien" the legislature meant to include liens "created by the property owner" and sought to apply the doctrine of *ejusdem generis.* The court held:

> "The rule of construction relied upon is of course not positive or mandatory, but is simply an aid to the ascertainment of the legislative intent. * * * The purpose of the statute is obviously to prevent a situa-

> tion wherein the condemnor will pay the full value of the land and thereafter will be forced to pay again to holders of liens on the land when the lien becomes due. *Bearing this purpose in mind, it certainly makes no difference whether the lien was created by the owner, as in the case of a mortgage, or arose in other ways.*" (p. 140.)

As stated by Mr. Fagg in his testimony before the Committee on Interstate and Foreign Commerce of the House of Representatives, 49 U. S. C. 523 is "primarily aimed to make a central clearinghouse for recordation of titles so that a person, wherever he may be, will know where he can find ready access to the *claims against, or liens, or other legal interests in an aircraft.*" To borrow the language of the Supreme Court of the State of California, just cited, "Bearing this purpose in mind, it certainly makes no difference whether the lien was created by the owner, * * * or arose in other ways."

Even a strict application of the rule of *ejusdem generis* would be of no avail to appellant. A bill of sale, a contract of conditional sale, a mortgage and an assignment of mortgage are all "instruments affecting title to, or interest in, property." A notice of tax lien affects the title to property and thus falls within the same general character of the documents specifically named.

If appellant's argument were sound, a judgment quieting title, a notice of *lis pendens,* a mechanic's lien and a decree of distribution in a probate proceeding—to name only four examples—would not be other instruments af-

fecting title to, or interest in, property, as these instruments do not involve "a transfer by an owner of property of some interest or right therein, by affirmative act."[16] Indeed, if appellant's theory were applied, the words "or other instrument affecting title to, or interest in, property" would be meaningless. And if a judgment quieting title, a notice of *lis pendens,* a mechanics' lien, a decree of distribution in probate and a notice of federal tax lien were exempt from 49 U. S. C. 523, the statute itself would be meaningless. It was not the intention of the Congress to employ meaningless words, much less enact a meaningless statute.

The doctrine of *ejusdem generis* is activated to make sense out of legislation, not to make it senseless:

> "The rule of *ejusdem generis* is applied as an aid in ascertaining the intention of the legislature, not to subvert it when ascertained."
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> *Texas v. the United States,* 292 U. S. 522, 54 Sup. Ct. 819, 78 L. Ed. 1402.

This cardinal principle was elaborated on in *United States Cement Co. v. Cooper,* 172 Ind. 599, 88 N. E. 69, where the court said of the rule:

> "It is never to be used in an arbitrary sense. * * * Whether or not the doctrine should be applied in any case depends largely upon the character and contents of the Act as a whole, having due regard for that primary rule of construction that the object of the law must be sought from the entire Act, including the title, and from a *consideration of the evil to be remedied,* the state of public sentiment existing

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[16]Appellant's Brief, page 14.

> at the time of the passage of the law, *and the general purpose of the Act* as derived from a consideration of every section. If the general purpose of the legislation clearly appears from a study of all the parts, that purpose cannot be defeated or limited by the doctrine we are considering."

Appellant's final argument for a nihilistic construction of the word "instrument" is that regulations of the Administrator of Civil Aeronautics require that the interest claimed in the aircraft be stated in the instrument which is to be recorded. Appellant urges that since a federal tax lien applies to after acquired property the interest in a specific aircraft might not be known at the time of recordation. This is a simple, procedural problem, not one of substance, and offers no reason for subverting the intent of Congress. Even under the regulation referred to and criticized by appellant, the government can protect itself with a little vigilance. Vigilance is required of the average citizen in most of his activities and dealings—requiring a little vigilance now and then on the part of the government would not seem to be such a sin.

Moreover, this concern of appellant is not shared by the courts. In *United States v. Maniaci,* 36 Fed. Supp. 293 (D. C. Mich., 1939), a federal tax lien was held subordinate to the rights of an innocent purchaser of real property where the government had not complied with the requirement of Section 3746 of the compiled laws of Michigan to the effect that notice of a lien must contain a description of the land upon which a lien is claimed. The decision was affirmed in 116 F. 2d 935 (Sixth Circuit, 1940) and was followed in *United States v. City of Detroit,* 138 F. 2d 418 (Sixth Circuit, 1943). In *Young-*

blood v. United States, 141 F. 2d 912 (Sixth Circuit, 1944), the court, in denying a writ of mandamus to compel the recording of a federal tax lien which did not contain a description of the property against which the lien was claimed, said at page 914:

> "Mere inconvenience to federal tax officials in procuring and filing descriptions of land owned by delinquent taxpayers supplies no sound basis for the issuance of peremptory writ of mandamus by federal courts."

The cases interpreting the language of the type used by Congress, the purpose of the language and the proper use of the rule of *ejusdem generis* support the conclusions of the lower court that federal tax liens are included in the phrase "or other instrument affecting title to, or interest in, property" and that tax liens come within the provisions of 49 U. S. C. 523.

(4) The District Court Correctly Considered the Purpose of 49 U. S. C. 523.

Appellant concludes its argument with the contention that, while "the court below might have been influenced by the thought that if a purchaser of aircraft, such as the appellee, could not rely on the Civil Aeronautics recording system as to tax liens, he might be subjected to an endless search of the records of every county in every state," such a conclusion would be erroneous and that "the courts must not add to the provisions of a statute or supply an omission or question the wisdom of the legislative body in adopting certain provisions and not adopting others."[17]

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[17]Appellant's Brief, pages 16-17.

In grasping to establish error in the reasoning of the District Court, appellant relies on the claim that under its interpretation of the law "all that the appellee had to do was to search the records of the county of domicile of the seller, *i. e.,* King County, Washington." [18] 11 Rem. Rev. Stats. of Wash. (1933), Sec. 11337-1 provides that a tax lien be recorded not in the county of domicile of the taxpayer, but in the county "within which the property subject to the lien is situated." This statute is typical of those of many states.[19] Thus, "the thought that if a purchaser of aircraft, such as the appellee, could not rely on the Civil Aeronautics recording system as to tax liens, he

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[18]Appellant's Brief, page 16.

[19]For example, Section 27330 of the Government Code of the State of California reads:

> "§27330. Notices of liens for internal revenue taxes: Certificates of discharge. Notices of liens for internal revenue taxes payable to the United States and certificates discharging such liens may be filed in the office of the county recorder of the county *within which the property subject to the lien is situated.*"

Thus, in California as well as in Washington only one office is authorized for the recordation of federal tax liens—the recorder's office in the county in which the property is situated at the time. This is so regardless of the number of counties into which the property later passes or comes to rest. An airplane is not a stationary property. In a matter of hours it can be "situated" in a multitude of counties in numerous states. Perhaps it is a slight exaggeration to say that a purchaser of an aircraft, lacking the comforting protection derived from 49 U. S. C. 523, would have to search the recording office of *every* county of *every* state in the United States. But to be *absolutely safe and sure,* this is precisely what would have to be done. And in all events the careful buyer would be well advised to search the recording office of all counties of all states in which it was known or believed that the airplane about to be purchased had been or reasonably might have been situated. It was to correct this situation and lend stability and certainty to transactions concerning the encumbering, financing and sale of aircraft that Congress passed the statute now under attack by appellant.

might be subjected to an endless search of the records of every county in every state" is well founded in fact and not erroneous reasoning as appellant claims.

Appellant goes on to urge that in any event the District Court should not have considered the possible effect of appellant's construction, for such a consideration was "really addressed to legislative policy.[20] Legislative intent and the history and purpose of 49 U. S. C. 523 are aids to an understanding of the meaning of the statute which the courts *must* probe and weigh—not ignore as appellant argues.

> "It would be anomalous to close our minds to persuasive evidence of intention on the ground that reasonable men could not differ as to the meaning of the words. Legislative materials may be without probative value, or contradictory, or ambiguous, it is true, and in such cases will not be permitted to control the customary meaning of words or overcome rules of syntax or construction found by experience to be workable; they can scarcely be deemed to be incompetent or irrelevant. See Boston Sand & Gravel Co. v. United States, *supra* (278 U. S. at 48, 73 L. Ed. 177, 49 S. Ct. 52). The meaning to be ascribed to an Act of Congress can only be derived from a considered weighing of every relevant aid to construction."
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> *United States v. Dickerson,* 310 U. S. 554 at 562, 84 L. Ed. 1356 at 1362.

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[20]Appellant's Brief, page 16.

The following discussion by Justice Reed in *United States v. American Trucking Associations,* 310 U. S. 534 at 542-4, 84 L. Ed. 1345 at 1350-1, effectively disposes of the contention of appellant:

> "In the interpretation of statutes, the function of the courts is easily stated. It is to construe the language so as to give effect to the intent of Congress. There is no invariable rule for the discovery of that intention. To take a few words from their context and with them thus isolated to attempt to determine their meaning, certainly would not contribute greatly to the discovery of the purpose of the draftsmen of a statute, particularly in a law drawn to meet many needs of a major occupation.
>
> There is, of course, no more persuasive evidence of the purpose of a statute than the words by which the legislature undertook to give expression to its wishes. Often these words are sufficient in and of themselves to determine the purpose of the legislation. In such cases we have followed their plain meaning. When that meaning has led to absurd or futile results, however, this Court has looked beyond the words to the purpose of the act. Frequently, however, even when the plain meaning did not produce absurd results but merely an unreasonable one 'plainly at variance with the policy of the legislation as a whole' this Court has followed that purpose, rather than the literal words. When aid to construction of the meaning of words, as used in the statute, is available, there certainly can be no 'rule of law' which forbids its use, however clear the words may appear

on 'superficial examination.' The interpretation of the meaning of statutes, as applied to justicable controversies, is exclusively a judicial function. This duty requires one body of public servants, the judges, to construe the meaning of what another body, the legislators, has said. Obviously there is danger that the courts' conclusion as to legislative purpose will be unconsciously influenced by the judges' own views or by factors not considered by the enacting body. A lively appreciation of the danger is the best assurance of escape from its threat but hardly justifies an acceptance of a literal interpretation dogma which withholds from the courts available information for reaching a correct conclusion. Emphasis should be laid, too, upon the necessity for appraisal of the purposes as a whole of Congress in analyzing the meaning of clauses or sections of general acts."

It was quite fitting, therefore, if the District Court was influenced "by considerations to the effect that, if tax liens be held valid as to aircraft without being recorded with the Administrator of Civil Aeronautics, that might weaken the effectiveness and reliability of the aircraft ownership recordation system and might fustrate the purpose of Congress in establishing the central recordation system."[21]

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[21]Appellant's Brief, page 16.

Conclusion.

The Congress of the United States in enacting 49 U. S. C. 523 recognized the peculiar problems involved in establishing the validity of a claim of title to aircraft. The language, the legislative history, and an application of fundamental rules of construction expose the intention of Congress to solve the problem by the establishment of a central office for the recordation of *all* claims to aircraft. The tenuous arguments of appellant to the contrary fail to penetrate this conclusion.

The District Court did not err in holding that 49 U. S. C. 523 establishes a system for recordation in a single agency of all claims against aircraft, including federal tax liens, and in holding that simply recording a federal tax lien under 26 U. S. C. 3672 against aircraft in the county where the aircraft may be situated at the moment is insufficient to establish the validity of a tax lien against innocent purchasers for value.

A judgment that tax liens are immune from the provisions of 49 U. S. C. 523 would require a ruling that the term "all other instruments" means nothing and was inserted in the Act by the Congress for no reason and for no purpose. That would collide with all rules of common sense and would be intolerable to the law.

The judgment of the Lower Court should be affirmed.

Respectfully submitted,

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